

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59077; File No. SR-NYSE-2008-127]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Exchange Rule 104T To Make a Technical Amendment To Delete Language Relating to Orders Received by NYSE Systems and DMM Yielding; Clarifying the Duration of the Provisions of Rule 104T; Making Technical Amendments to Rule 98 and Rule 123E To Update Rule References for DMM Net Capital Requirements; Rescinding Paragraph (g) of Rule 123; and Making Conforming Changes to Certain Exchange Rules To Replace the Term “Specialist” with “DMM”

December 10, 2008.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 8, 2008, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (i) Amend Exchange Rule 104T to make a technical amendment to delete language relating to orders received by NYSE systems and DMM yielding; (ii) clarify the duration of the provisions of Rule 104T; (iii) make technical amendments to Rule 98 and Rule 123E to update rule references for DMM net capital requirements; (iv) rescind paragraph (g) of Rule 123; and (v) make conforming changes to certain Exchange rules to replace the term “specialist” with “DMM.”

The text of the proposed rule change is available at <http://www.nyse.com>, NYSE’s principal office, and the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The New York Stock Exchange LLC (“NYSE” or the “Exchange”) is proposing to: (i) Amend Exchange Rule 104T to make a technical amendment to delete language relating to orders received by NYSE systems and DMM yielding that was inadvertently not removed in the filing to create its New Market Model;<sup>4</sup> (ii) clarify the duration of the provisions of Rule 104T; (iii) make technical amendments to Rule 98 and Rule 123E to update rule references for DMM net capital requirements; (iv) rescind paragraph (g) of Rule 123; and (v) make conforming changes to certain Exchange rules to replace the term “specialist” with “DMM.”

###### Background

On October 24, 2008, the Commission approved the operation of a pilot for the Exchange’s New Market Model. As part of this new model the functions formerly carried out by specialists on the Exchange were replaced by a new market participant, known as a Designated Market Maker (“DMM”). While there are some similarities in the manner in which DMMs operate, there are some major differences as well. For example, DMMs continue to be assigned individual NYSE-listed securities as they were under the specialist system, and have an affirmative obligation with respect to maintaining a fair and orderly market for trading those assigned securities. Unlike the specialist system, each DMM also has a minimum quoting

requirement<sup>5</sup> in its assigned securities but no longer has a negative obligation.

The implementation of these changes required the Exchange to amend its previous rule governing specialist conduct, former NYSE Rule 104 (Dealings by Specialists). As approved, the New Market Model will be phased<sup>6</sup> into the Exchange’s marketplace to allow for the careful monitoring of technological and trading pattern changes that are the core of its operation. The Exchange therefore created transitional NYSE Rule 104T in order to govern DMM conduct during the first phase of the pilot.

##### Proposed Amendments to Rule 104T

In the New Market Model filing, the Exchange indicated that it anticipated that Phase 1 would be completed in five weeks while Phase 2 of the pilot would be completely implemented no later than ten weeks after the approval of that filing. The preliminary note to Rule 104T states that the rule is operative from the time of its approval by the Commission until five weeks after such approval, *i.e.*, until the completion of Phase 1. This was meant to address the two phases of the pilot, wherein Phase 1 would be operative for those first five weeks (*i.e.*, by November 28, 2008) and Phase 2 would begin thereafter. Consistent with this schedule, the Exchange completed the installation of all Phase 1 technology on November 17,

<sup>5</sup> DMMs will be required to maintain displayed bids and offers at the National Best Bid or Offer (“NBBO”) for a certain percentage of the trading day in assigned securities. Specifically, with respect to maintaining a continuous two-sided quote with reasonable size, DMMs must maintain a bid or offer at the NBBO (“inside”) for securities in which the DMM is registered at a prescribed level based on the average daily volume of the security. Securities that have a consolidated average daily volume of less than one million shares per calendar month are defined as Less Active Securities and securities that have a consolidated average daily volume of equal to or greater than one million shares per calendar month are defined as More Active Securities.

For Less Active Securities, a DMM unit must maintain a bid or an offer at the NBBO for at least 10% of the trading day during a calendar month. For More Active Securities, a DMM unit must maintain a bid or an offer at the NBBO for at least 5% or more of the trading day during a calendar month. DMMs will be expected to satisfy the quoting requirement for both volume categories in their assigned securities.

<sup>6</sup> Pursuant to the implementation schedule, no later than five weeks after Commission approval, DMMs will still receive information about orders that are at or between the Exchange quote. DMMs must continue to abide by their affirmative obligations, meeting his or her requirements to maintain displayed bids and offers at the NBBO and re-enter liquidity pursuant to NYSE Rule 104T (“Phase 1”). After the fifth week of the operation of the Pilot, Phase 1 will be completed and NYSE Rule 104T will cease operation. Once NYSE Rule 104T ceases operation, DMMs will be subject to new NYSE Rule 104 (Dealings and Responsibilities of DMMs) (“Phase 2”).

<sup>4</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (approving certain rules to operate as a pilot scheduled to end October 1, 2009.)

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

2008 and is progressively installing the Phase 2 technology. It was always understood that those securities operating without Phase 2 technology must still be subject to the provisions of Rule 104T; however, the preliminary note of Rule 104T inaccurately describes its schedule of operation. The Exchange therefore seeks to amend the preliminary note of NYSE Rule 104T to state that it will cease operation no later than ten weeks after the approval of SR-NYSE-2008-46, the New Market Model which will allow for the progressive installation of the Phase 2 technology.

The Exchange further seeks to amend NYSE Rule 104T to remove legacy language that requires the DMM to yield his or her trading interest. Specifically, NYSE Rule 104T Supplementary Material .10 subparagraph (10) requires the DMM to yield his or her trading interest that has been expressed orally to later arriving system orders capable of trading in the transaction that was consummated on the basis of the oral interest expressed by the DMM. The requirement to yield in legacy Rule 104 was a function of the specialist's negative obligation and should have

been removed in the New Market Model filing. Moreover, this particular section of the rule also refers to Convert and Parity Orders ("CAP") that were rescinded as valid order types on the Exchange pursuant to the New Market Model filing. As such, the Exchange proposes to rescind the provisions of NYSE Rule 104T Supplementary Material .10 subparagraph (10) in its entirety.

#### Proposed Amendments to Rules 98 and 123E

The Exchange further proposes through this rule filing to make correct cross references contained in NYSE Rules 98 and Rule 123E. In particular, the requirements for DMM unit net capital were previously part of NYSE Rule 104.21 but were relocated to NYSE Rule 103.20(b) as part of the New Market Model filing. NYSE Rules 98(c)(2)(D) and Rule 123E(f)(i) still referenced the previous NYSE Rule 104.21 for the market maker's net capital requirements. Accordingly, the Exchange proposes to amend NYSE Rule 98(c)(2)(D) and Rule 123E(f)(i) to

change the rule reference from NYSE Rule 104.21 to NYSE Rule 103.20.

#### Rescission of Paragraph (g) of Rule 123

Rule 123 (Records of Orders) contains various record keeping requirements for members and member organizations. Paragraph (g) requires that a record be kept of any request made to a specialist to yield to a customer order pursuant to Rule 104.10(5)(i)(a)(I)(d). The Exchange proposes to rescind this requirement since DMMs trade on parity with all other interest in the Exchange market, and is no longer required to yield to customer orders.

#### Conforming Changes to NYSE Rules

Finally, the Exchange proposes to amend the NYSE Rules listed in the table below to substitute the word "specialist" with "DMM," or "DMM Unit" as appropriate to conform these rules to the operation of the New Market Model. Also reflected in the chart below is the Exchange's proposal to add the terms "market maker" and "market making" to NYSE Rule 431 in order to reflect the current DMM operating on the NYSE.

Rule	Section	Substitution or addition
2A (Jurisdiction) .....	(c) .....	"specialist" changed to "DMM".
15 (Pre-Opening Indications) .....	(b) .....	"specialist" changed to "DMM".
48 (Exemptive Relief—Extreme Market Volatility Condition).	(b)(2) .....	"specialist" changed to "DMM".
70 (Execution of Floor Broker Interest) .....	.25(a)(vii) and (viii) .....	"specialist" changed to "DMM" "DMM" and "DMM Unit".
111 (Reports of Executions) .....	(b) .....	"specialist" changed to "DMM".
124 (Odd-Lot Orders) .....	(f) .....	"specialist" changed to "DMM".
325 (Capital Requirements Member Organizations) .....	(c)(2) .....	"specialist" changed to "DMM".
431 (Margin Requirements) .....	(f)(2)(M)(iv)(10)(F) .....	"market maker" and "market making".
440G (Transactions in Stocks and Warrants for the Accounts of Members, Principal Executives and Member Organizations).	.10(7)(h) .....	"specialist" changed to "DMM".
900 Off-Hours Trading: Applicability and Definitions .....	(b)(iii) .....	"specialist" changed to "DMM".

## 2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the "1934 Act") for this proposed rule change are the requirements under section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the instant proposal is consistent with the above principals [sic] in that it conforms the rule language to the approved New Market model which the Exchange anticipates will enhance the liquidity in the market and foster increased competition among Exchange market participants thus providing Exchange

customers with additional opportunities for price improvement.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>10</sup> which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will conform the rule text to what was previously approved by the Commission in a prior Exchange proposed rule change, and make clarifications technical to those rules.<sup>11</sup> Waiving the operative delay will ensure that the rule text of the Exchange is accurate and will avoid potential confusion by eliminating technical errors.<sup>12</sup> Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> See *supra* note 4.

<sup>12</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-127 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-127. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2008-127 and should be submitted on or before January 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon,

*Acting Secretary.*

[FR Doc. E8-29901 Filed 12-16-08; 8:45 am]

BILLING CODE 8011-01-P

#### SMALL BUSINESS ADMINISTRATION

##### Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

**ACTION:** Notice of Reporting Requirements Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before January 16, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205-7044.

##### **SUPPLEMENTARY INFORMATION:**

*Title:* Gulf Coast Relief Financing Pilot Information Collection.

*SBA Form Numbers:* 2276A, B, C, 2281, 2262.

*Frequency:* On occasion.

*Description of Respondents:* Applications for an SBA Loan.

*Responses:* 120.

*Annual Burden:* 180.

Jacqueline White,

*Chief, Administrative Information Branch.*

[FR Doc. E8-29893 Filed 12-16-08; 8:45 am]

BILLING CODE 8025-01-P

#### DEPARTMENT OF TRANSPORTATION

##### Federal Highway Administration

##### Notice of Final Federal Agency Actions on Proposed Highway in Utah

**AGENCIES:** Federal Highway Administration (FHWA), USDOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by Army Corps of Engineers, (USACE), Department of Defense, (DOD).

**SUMMARY:** This notice announces actions taken by the USACE that are final

<sup>14</sup> 17 CFR 200.30-3(a)(12).